

ORDER NO. 5502

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Competitive Product Prices
Inbound E-format Letter Post

Docket No. CP2020-120

ORDER APPROVING PRICES FOR INBOUND LETTER POST SMALL PACKETS
AND BULKY LETTERS AND ACKNOWLEDGING PRICES FOR INBOUND
COMPETITIVE INTERNATIONAL REGISTERED MAIL SERVICE

(Issued May 8, 2020)

I. INTRODUCTION

On April 10, 2020, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for its Inbound Letter Post Small Packets and Bulky Letters product effective on January 1, 2021.¹ For the reasons given below, the Commission approves the proposed prices for Inbound Letter Post Small Packets and Bulky Letters.

¹ Notice of the United States Postal Service of Specific Rates Not of General Applicability for Inbound E-Format Letter Post for 2021, and Application for Non-Public Treatment, April 10, 2020, at 1 (Notice).

II. BACKGROUND

Inbound Letter Post Small Packets and Bulky Letters. On November 16, 2018, the Postal Service filed a request seeking modification of the Market Dominant and Competitive product lists pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*² In the Request, the Postal Service proposed to: (1) remove Inbound Letter Post small packets and bulky letters from the Market Dominant Inbound Letter Post product on the Market Dominant product list; and (2) add identical services to the Competitive product list. Docket No. MC2019-17 Request at 1. The Postal Service did not propose prices for the affected mailpieces when it filed its Request. *See id.* at 9. In Order No. 4980, the Commission conditionally approved the transfer of Inbound Letter Post Small Packets and Bulky Letters items from the Market Dominant to the Competitive product list.³ The Commission held that before Inbound Letter Post Small Packets and Bulky Letters may be added to the Competitive product list, the Postal Service must propose and the Commission must approve prices that satisfy 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.⁴

On October 29, 2019, the Postal Service provided notice of specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on July 1, 2020, and filed these self-declared rates under seal.⁵

² Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018, at 1 (Docket No. MC2019-17 Request). 39 C.F.R. part 3020 was later renumbered as 39 C.F.R. part 3040. *See* Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020, at 24 (Order No. 5407).

³ Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 18 (Order No. 4980).

⁴ Order No. 4980 at 19. 39 C.F.R. part 3015 was later renumbered as 39 C.F.R. part 3035. *See* Order No. 5407 at 24.

⁵ Docket No. CP2019-155, Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-format Letter Post, and Application for Non-Public Treatment, October 29, 2019, Attachment 2.

On December 19, 2019, the Commission approved those self-declared prices.⁶ The Commission found that proposed prices should generate sufficient revenue to cover the costs attributed to the Inbound Letter Post Small Packets and Bulky Letters product. *Id.* at 15. Accordingly, the Commission found that the proposed prices complied with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3015.⁷ As a result, the conditions for the transfer of inbound small packets and bulky letters from the Market Dominant Inbound Letter Post product to the Competitive Inbound Letter Post Small Packets and Bulky Letters product were met effective January 1, 2020. See Order No. 4980 at 19.

Notice. In this proceeding, the Postal Service proposes specific per-item and per-kilogram self-declared prices for Inbound Letter Post Small Packets and Bulky Letters to be effective on January 1, 2021. Notice at 1. Under the Universal Postal Convention, if the Postal Service opts to self-declare rates for small packets and bulky letters, it must submit self-declared rates for Inbound Letter Post Small Packets and Bulky Letters that would take effect on January 1, 2021, by June 1, 2020.⁸ The Postal Service states that the proposed prices comply with 39 U.S.C. § 3633(a). Notice at 4.

In addition, the Postal Service provides rates for the Inbound Competitive International Registered Mail service, which “are fixed by the UPU Convention and its Regulations[,]” and supporting financial workpapers.⁹

⁶ Docket Nos. MC2019-17 and CP2019-155, Order Granting Postal Service’s Motion and Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, December 19, 2019, at 15 (Order No. 5372).

⁷ *Id.* 39 C.F.R. part 3015 was later renumbered as 39 C.F.R. part 3035. See Order No. 5407 at 24.

⁸ *Id.* at 2; Second Additional Protocol to the Universal Postal Convention (Universal Postal Union (UPU) Convention) Article 28bis.1. The UPU Convention is available at: http://www.upu.int/uploads/tx_sbdownloader/actsActsOfTheExtraordinaryCongressGenevaEn.pdf.

⁹ Notice at 3; Second Additional Protocol to the UPU Convention Article 28.8 (setting registered rate of 1.400 SDR for 2021, and authorizing UPU’s Postal Operations Council to add supplementary remuneration for additional features); *id.* Article 28.9 (providing additional 0.5 SDR per registered item not carrying a UPU-compliant barcode).

Initial Commission action. On April 13, 2019, the Commission issued a notice establishing the docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.¹⁰

Information requests. On April 16, 2020, the Commission issued Commission Information Request No. 1.¹¹ The Postal Service responded to CIR No. 1 on April 23, 2020.¹² On April 22, 2020, Chairman's Information Request No. 1, which included two questions filed under seal, was issued.¹³ The Postal Service responded to CHIR No. 1 and filed revised financial workpapers under seal on April 29, 2020.¹⁴

Motions for access. Two participants, United Parcel Service, Inc. (UPS) and the Association for Postal Commerce (PostCom), filed motions requesting access to information filed under seal. On April 20, 2020, UPS filed a motion for access to non-public versions of Attachments 2 and 4 of the Postal Service's Notice, and associated workpapers.¹⁵ On April 21, 2020, PostCom filed a motion requesting access to non-public versions of Attachments 2 and 4 of the Postal Service's Notice.¹⁶ On April 27, 2020, the Postal Service filed its response to the motions submitted by both UPS and

¹⁰ Notice and Order of Specific Rates for Inbound Letter Post Small Packets and Bulky Letters, April 13, 2020 (Order No. 5479).

¹¹ Commission Information Request No. 1, April 16, 2020 (CIR No. 1).

¹² Response of the United States Postal Service to Commission Information Request No. 1, April 23, 2020 (Response to CIR No. 1).

¹³ Chairman's Information Request No. 1 and Notice of Filing Under Seal, April 22, 2020 (CHIR No. 1).

¹⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, April 29, 2020 (Response to CHIR No. 1).

¹⁵ United Parcel Service, Inc.'s Motion Requesting Access to Non-Public Materials Under Protective Conditions, April 20, 2020.

¹⁶ Motion of the Association for Postal Commerce for Access to Nonpublic Materials, April 21, 2020.

PostCom.¹⁷ On April 30, 2020, the Commission granted UPS's and PostCom's motions for access.¹⁸

III. PROPOSED SELF-DECLARED RATES

The Postal Service proposes specific per-item and per-kilogram self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product effective January 1, 2021. Notice at 1. The Postal Service states that these "self-declared rates will be charged to other UPU designated postal operators, except to the extent that the UPU Convention establishes terminal dues rates that the Postal Service must charge in lieu of self-declared rates for certain low-volume letter-post streams dispatched from other countries[.]" *Id.* at 2. Specifically, the Postal Service states that terminal dues rates would apply to UPU Group II and III countries that have annual mail flows less than 25 tonnes and to UPU Group IV countries with annual mail flows less than 100 tonnes. *Id.* at 2-3 n.8. The Postal Service also asserts that, as shown in the supporting financial workpapers, the proposed prices for the Inbound Letter Post Small Packets and Bulky Letters product satisfy the statutory and regulatory requirements for Competitive products. *Id.* at 3.

¹⁷ Response of the United States Postal Service to Motions of United Parcel Service Inc. and the Association for Postal Commerce Requesting Access to Non-Public Materials Under Protective Conditions, April 27, 2020.

¹⁸ Order Granting Motions for Access to Non-Public Materials, April 30, 2020 (Order No. 5496). Because the certifications filed by PostCom referenced an incorrect attachment, the Commission ordered PostCom to file revised certifications that referenced the correct attachment. Order No. 5496 at 13. PostCom filed revised certifications on April 30, 2020. Corrected Certifications for Reviewing Representatives of the Association for Postal Commerce, April 30, 2020.

IV. COMMENTS

The Commission received comments from the Public Representative and UPS on April 27, 2020.¹⁹ The Public Representative concludes that the proposed prices for the Inbound Letter Post Small Packets and Bulky Letters product that will go into effect on January 1, 2021 satisfy the requirements of 39 U.S.C. § 3633(a). PR Comments at 2. Accordingly, she recommends approval of the proposed prices.

In its comments, UPS does not address whether the proposed Inbound Letter Post Small Packets and Bulky Letters rates satisfy section 3633(a). Instead, UPS focuses its comments on the fact that the Postal Service filed the self-declared rates under seal. UPS asserts that the Commission should not accord non-public treatment to the self-declared rates. UPS Comments at 2. UPS states that the “Postal Service has no basis to redact [the self-declared rates] in light of [a previous Commission order unsealing the self-declared rates that go into effect July 1, 2020].” *Id.* Furthermore, UPS claims that unsealing the unredacted attachments and supporting financial workpapers would permit all interested parties a chance to comment on the data, which would result in more meaningful participation. *Id.*

V. COMMISSION ANALYSIS

Inbound Letter Post Small Packets and Bulky Letters. The Commission reviews price changes for Competitive products in terms of the criteria in 39 U.S.C. § 3633(a). These criteria prohibit the subsidization of Competitive products by Market Dominant products (§ 3633(a)(1)); require each Competitive product to cover its attributable costs (§ 3633(a)(2)); and require Competitive products as a whole to cover an appropriate share of institutional costs (§ 3633(a)(3)). As long as the revenue generated by the product exceeds its attributable cost, the proposed prices are unlikely to reduce the

¹⁹ Public Representative Comments on Postal Service Notice of Specific Rates for Inbound E-Format Letter Post Small Packets and Bulky Letters, April 27, 2020 (PR Comments); United Parcel Service, Inc.’s Comments, April 27, 2020 (UPS Comments).

contribution of Competitive products as a whole or to adversely affect the ability of Competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Competitive product covers its attributable costs, the proposed prices are likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Notice, supporting data filed under seal, and comments. According to the workpapers filed by the Postal Service, the total projected revenue for Inbound Letter Post Small Packets and Bulky Letters from terminal dues and self-declared rates in the 12-month period of Calendar Year 2021 exceeds the total projected attributable costs for Inbound Letter Post Small Packets and Bulky Letters. The Commission finds that the proposed prices should generate sufficient revenue to cover the costs attributed to the Inbound Letter Post Small Packets and Bulky Letters product. The Commission, therefore, concludes that the new Competitive prices comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3035.

Inbound Competitive International Registered Mail. In this proceeding, the Postal Service also provides prices for the Inbound Competitive International Registered Mail component of the Competitive International Ancillary Services product and supporting workpapers.²⁰ The Postal Service notes that prices for the Inbound Competitive International Registered Mail service are fixed by the UPU Convention and its Regulations. *Id.* The Commission acknowledges the planned prices for the Inbound Competitive International Registered Mail service within the Competitive International Ancillary Services product.²¹

²⁰ Notice at 3. The Commission reminds the Postal Service that when it prepares its workpapers, the Postal Service should include actual data reflecting which designated operators voluntarily participate in the supplemental remuneration program for registered service. In addition, the workpapers should reflect actual supplemental remuneration earned by the Postal Service through the UPU's voluntary supplemental remuneration program for registered mail.

²¹ The Commission notes that the June 1, 2020 deadline for providing the UPU notice of the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters does not apply to rates for registered mail or to the voluntary supplemental remuneration program for registered mail. Therefore, in the future, the Postal Service does not need to provide notice of rates for Inbound Competitive International Registered Mail service when it provides notice of proposed self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product.

VI. APPLICATION FOR NON-PUBLIC TREATMENT FOR SELF-DECLARED RATES

The Postal Service filed specific per-item and per-kilogram self-declared prices with its Notice. See Notice at 4. The Postal Service filed these self-declared rates under seal and requests that the Commission afford these self-declared prices non-public treatment. *Id.* Attachment 1 (Application).

The Commission asked whether the Postal Service would consent to unsealing the self-declared rates after the UPU publishes the self-declared rates no later than July 1, 2020. See CIR No. 1. The Postal Service responded that it does not voluntarily consent to unsealing the self-declared rates. Response to CIR No. 1. However, “absent any materially changed circumstances,” the Postal Service states that it expects to comply if the Commission determines that it would be inappropriate to accord non-public treatment to the self-declared rates for Inbound Letter Post Small Packets and Bulky Letters and directs the Postal Service to publicly file those rates seven days after the rates are published via UPU IB Circular. *Id.*

UPS opposes the Postal Service’s application for non-public treatment for the self-declared prices. UPS notes that the Commission recently issued a determination to unseal the specific per-item and per-kilogram self-declared rates that will take effect on July 1, 2020. UPS Comments at 2. UPS states that when determining that the Postal Service should publicly file the July 1, 2020 self-declared rates, the Commission considered and rejected the same commercial harms that the Postal Service alleges in its Application. *Id.* UPS asserts that the Postal Service has no basis to redact the self-declared rates in light of this earlier determination and requests the Commission order the Postal Service to publicly release the self-declared rates immediately. *Id.* In addition to the self-declared rates, UPS states that other materials filed under seal should be publicly available. *Id.*

The Commission reviews the arguments raised in the Postal Service’s application for non-public treatment, UPS’s comments, and the Postal Service’s

response to CIR No. 1 in a concurrent order that addresses whether the Commission will accord non-public treatment to the specific self-declared prices.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission concludes that the self-declared rates for the Inbound Letter Post Small Packets and Bulky Letters product proposed in the Notice of the United States Postal Service of Specific Rates Not of General Applicability for Inbound E-Format Letter Post for 2021, and Application for Non-Public Treatment comply with 39 U.S.C. § 3633(a) and 39 C.F.R. part 3035. The proposed prices may take effect as scheduled.
2. The Commission acknowledges the prices for the Inbound Competitive International Registered Mail service within the Competitive International Ancillary Services product.

By the Commission.

Erica A. Barker
Secretary